



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

July 25, 2000
AO-00-18

Thomas Lyons, Treasurer
The Barbara Hildt Committee
8 Oak Street
Newburyport, MA 01950

Re: Committee Fundraising Auction

Dear Mr. Lyons:

This letter is in response to your July 6, 2000 request for an advisory opinion regarding a fundraising auction.

You have stated The Barbara Hildt Committee (the "Committee") is planning to hold an auction to raise funds for Barbara Hildt's campaign on August 16, 2000. Based upon your email and conversations between you, the candidate and OCPF staff, it is my understanding that a number of artists intend to donate their personal works of art to the Committee. Some artists may also wish to "keep some of the sales price" for themselves.

I understand that the Committee hopes that other individuals will also donate goods or services for the Auction. For example, a supporter may donate a sail on the donor's sailboat, a weekend at a bed and breakfast or a home cooked meal.

You have asked for guidance generally and answers to three specific questions, which are noted below.

Questions

- (1) Must a work of donated art be reported as a "contribution" in accordance with the campaign finance law?
- (2) May the "sales or bid price" be split between the Committee and an artist?
- (3) May the Committee establish a People's Committee or PAC to receive the artwork and otherwise organize and conduct the auction?

Answer

- (1) No. An artist's work, if donated by the artist, may be treated as a "personal service" of the artist that is provided to the Committee. By definition, a personal service is not a contribution and therefore does not need to be reported.
- (2) Yes. The successful bidder should write two checks, one to the Committee and one to the artist.
- (3) No.

Discussion

A candidate may only have one political committee organized on his or her behalf. See M.G.L. c. 55, §. 5. Therefore, the Committee may not organize a PAC or People's Committee to conduct the auction. The Committee may however conduct and organize the auction by itself. Like any other fundraising activity, the Committee should keep detailed accounts and records of the items donated to the Committee, the costs of the auction and the contributions received at the auction.

A political committee may "conduct an auction in connection with a fundraising event and make expenditures in relation to such an event consistent with the campaign finance law and regulations." See AO-93-31. Generally, an item donated to the Committee would be treated as an in-kind contribution and must be valued at fair market value using the item's purchase price, the bid price, or a price established by an appraisal. See M.G.L. c. 55, §. 1, 970 CMR 2.07(3) and GL-97-05. Like any in-kind contribution, the Committee should report the name and address of the contributor, the date and amount and a description of the good or service contributed on Schedule C of Form CPF 102 ND.

For this auction, however, you have stated that the artists would be donating their personal artwork. The artists' donation of their own painting or other artwork and any expenses incidental thereto such as the cost of a canvas, paint and paintbrush¹ may be treated as a "personal service." See M.G.L. c. 55, §. 1. Personal services are not contributions and do not need to be reported by the Committee on its campaign finance reports. See AO-98-17 and AO-93-32. Similarly, the donation of other personal service such as a day's sail on the donor's sailboat or a supporter's home cooked meal would not be a contribution. Donations of other items, such as a gift certificate for a meal at a restaurant² or for flowers, however, would be considered as an in-kind contribution to the Committee and would be reported on Schedule C as noted above.

As noted above, you state that some of the artists would like to donate a portion of the value of their work to the Committee and "keep some of the sales price" for themselves. The simplest method

¹ Unlike paintbrushes and a canvass, which are incidental expenses necessarily incurred by the artist in order to create a painting, the cost of a picture frame would not be such an incidental expense and therefore would constitute an in-kind contribution unless the artist designs and builds the picture frame personally. In this case, the picture frame may also be treated as a personal service like the painting itself.

² The campaign finance law prohibits business and professional corporations from making contributions to candidates. See M.G.L. c. 55, §. 8. . If a restaurant or other business is such a corporation, it may not donate a meal to the campaign. The owner or other individual may purchase a gift certificate from the business. In such case, the owner or other individual is making an in-kind contribution to the campaign subject to the \$500 individual contribution limitation. See M.G.L. c. 55, § 7A. Similarly, if an individual owns a restaurant as a sole proprietor, the individual, not the corporation, may donate a meal at the restaurant as an in-kind contribution.

for accomplishing this task is for the successful bidder to write two checks, one to the Committee and one to the artist. For example, if the Committee and the artist have agreed to split the proceeds of a sale equally and a work of art sells for \$600, the successful bidder should write one check to the artist for \$300 and one check to the Committee for \$300. The Committee would report a contribution of \$300 from the bidder. If the artwork were a personal service, the Committee would not have to report any contribution from the artist.

The Committee should keep in mind that a "sale" of a work of art or any other good or services, whether or not the result of a donated personal service, at an auction is a "contribution" to the Committee from the successful bidder. Such a sale(s) or bid(s), therefore, is subject to the relevant contribution limits and must be reported on Schedule A of the Committee Form CPF 102ND. For example, an individual may contribute no more than \$500 to a candidate during a calendar year.³ See M.G.L. c. 55, § 7A. Therefore, unless the proceeds of the sale are split between the Committee and an artist as discussed above, an individual may only bid and pay up to \$500 on any one item (or an aggregate of \$500 on all items), assuming that he or she has not previously contributed to the Committee during the year. Similarly, under the same assumptions, a husband and wife could bid and pay up to \$1,000.

For your information, I have enclosed copies of AO-93-31 and GL-97-05.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and in your conversation with OCPF staff. Please contact us if you have further questions

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

³ Contributions from an individual that exceed \$50 in the aggregate in a calendar year must be made by personal check or a check drawn on an account for which the contributor is personally liable. See M.G.L. c. 55, § 9.